IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10467 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAGDISH OIL INDUSTRIES

Versus

GEB

Appearance:

1. Special Civil Application No. 10467 of 1999

MR ASHISH M DAGLI for Petitioner No. 1

..... for Respondent No. 1

MR HS MUNSHAW for Respondent No. 2

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 22/10/2001

ORAL JUDGEMENT

Leave to produce the application dated 16.4.1998 is granted.

Rule. Mr. H.S. Munshaw, learned counsel appears for the Respondent No. 2 and waives the service of Rule.

2. The petitioner in this petition has challenged the decision dated 16.4.1998 rendered by the Appellate Committee- Gujarat Electricity Board, West Zone, Rajkot at Annexure - B. Under the said decision, the Appellate Committee has partly allowed the appeal. The Appellate Committee held that theft is established, but bill will be computed for 156 days instead of 182 days computed. The Appellate Committee, therefore, directed that refundable amount, if any, be adjusted towards the subsequent bill. It is the case of the petitioner that on 16.4.1998, the day on which the decision has taken place, the petitioner has applied before the Appellate Authority for permission to produce documents of Sales Tax as well as of Civil Supplies Department by way of application. In the said application, the petitioner has applied for adjournment. The petitioner has stated in the petition that the Appellate Committee orally informed the petitioner that the adjournment was granted and the next date shall be informed to him. It is the grievance of the petitioner that instead of adjourning the case, the Appellate Committee passed the order on the same day i.e. on 16.4.1998, which is contrary to the procedure adopted by the Committee.

3. Learned counsel Mr. Munshaw appearing for the Board has submitted that petitioner was heard at length on 16.4.1998 and production of documents of Sales Tax and Civil Supplies Department are not relevant to decide the case especially, when the petitioner was involved in the theft of power by way of tampering with the Meter. Mr. Munshaw has also submitted that the petitioner has made full payment in pursuance of the decision by the Appellate Committee and therefore, the said issue has now become irrelevant.

4. There is no dispute regarding the fact that the petitioner did apply before the Appellate Committee for adjournment for the purpose of production of certain documents. The Appellate Committee in its order, has not mentioned about the request made by the petitioner. The petitioner in the petition has specifically stated that he has sought adjournment for production of documents of Sales Tax as well as Civil Supplies Department. The petitioner has further stated that orally, the Committee has adjourned the matter to enable the petitioner to produce documents. Whether those documents are relevant

or not, is the question to be gone into by the Appellate Authority. In my opinion, the Appellate Authority has committed the breach of principles of natural justice. In view of the fact that the petitioner has already deposited the amount as per the supplementary bill after the decision of the Appellate Committee, there will not be any prejudice regarding payment of bill, if the Appellate Committee is asked to re-hear the appeal afresh.

5. Under the aforesaid facts and circumstances of the case, without entering into the merits of the case and without deciding the other questions posed in the petition, the matter is remanded to the Appellate authority to rehear the petitioner and decide the appeal filed by the petitioner afresh in accordance with law after permitting the petitioner to produce documents stated in the application dated 16.4.1998.

6. With above directions and observations, this petition is allowed. The impugned decision dated 16.4.1998 at Annexure - B of the Appellate Committee is quashed and set aside. The Appellate Committee shall hear and decide the appeal afresh preferred by the petitioner in accordance with law after hearing the petitioner and by permitting the petitioner to produce documentary evidence as stated in his application. It is made clear that the impugned order is set aside for a limited purpose only. However, on that basis, the petitioner will not be entitled to refund of the amount as prayed for. It is clarified that the amount paid by petitioner will be adjusted subject to the decision, that may be taken by the Appellate Committee. Rule is made absolute. No order as to costs.

(K.R. Vyas, J.)
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